

ZONING BOARD OF APPEALS  
WELLESLEY, MASSACHUSETTS

RULES AND REGULATIONS

Pursuant to the provisions of Massachusetts General Laws, Chapter 40A Section 12 and Chapter 40B, Sections 21-23, and the Wellesley Zoning Bylaw, for the purpose of establishing uniform procedures for conducting the business of the Board which, in general, but without limitation, shall consist of hearing all petitions, applications and appeals coming under its jurisdiction as both a permit granting authority and a special permit granting authority, the Zoning Board of Appeals of the Town of Wellesley hereby adopt the following rules:

Article I – Organization

Section 1: Members and Officers

The Zoning Board of Appeals shall consist of three permanent and three associate members, all of whom have been appointed by the Board of Selectmen for three year terms. All members shall elect the officers of the Zoning Board annually, which shall include the Chairman and the Vice-Chairman. The election shall occur at the first meeting in July, or at the earliest possible meeting thereafter when the entire Board is present. The Executive Secretary shall serve as Clerk.

Section 2: The Chairman – Powers and Duties

The Chairman shall preside at all meetings of the Board. He or she shall vote and be recorded on all matters coming before the Board. He or she shall decide on all points of order, unless overruled by a majority of the members sitting. He or she shall oversee the work of the Executive Secretary, request necessary help and exercise general supervisory power.

Section 3: The Vice-Chairman – Duties

In the absence, inability to act or apparent conflict of interest on the part of the Chairman, the Vice-Chairman shall perform the duties of the Chairman.

Section 4: Clerk – Duties

The Clerk shall be subject to the direction of the Board and its Chairperson, shall undertake all of the clerical work of the Board including all correspondence of the Board, sending all notices required by law and the rules and orders of the Board, prepare all application forms, receive and scrutinize all petitions and applications for compliance with the rules of the Board, prepare dockets, keep minutes of the Board's proceedings, compile all required records, draft all required decisions, maintain necessary files and indices and read the legal notices at all Public Hearings.

### Section 5: Associate Members

Associate members shall sit on the Board as part of a regularly scheduled rotation of the permanent members, or in the case of absence, inability to act, or apparent conflict of interest on the part of any Board member.

### Section 6: Quorum

Three members shall constitute a quorum.

## Article II – Functions of the Board

### Section 1: Public Hearings

The Board shall hold public hearings on all requests for variances, special permit/findings, special permits, appeals from decisions of Administrative Officials, site plan approvals and comprehensive permits. All hearings shall be open to the public. The use of cell telephones or other electronic paging devices is prohibited at all hearings.

### Section 2: Hearing Schedule

Regular meetings of the Board shall be held as necessary on Thursdays at 7:30 p.m. in the designated room at the Wellesley Town Hall. Petitions for variances, special permit/findings, special permits and appeals are heard at a hearing separate from the hearing of petitions for site plan approvals and comprehensive permits. The agenda for the former shall be limited to a maximum of ten petitions. All meetings shall be recorded electronically and written minutes shall be prepared by the Clerk.

### Section 3: Notice of Public Hearings

Notice of hearings shall be advertised in accordance with Mass General Laws, Chapter 40A, Section 11. In addition, a copy of the advertised notice shall be sent by mail so that the postmark date is at least 14 days prior to the date of the hearing to all parties in interest, including the property owner, the petitioner (if different), abutters, owners of land within 300 feet of the property line, all as they appear on the most recent tax list, the Town Clerk, the Planning Board, the Inspector of Buildings, the Planning Boards of every abutting City or Town, and all other relevant Town Departments and Boards.

### Section 4: Representation and Absence

An applicant shall appear in his/her behalf, or be represented by an agent or attorney. In the absence of any appearance without written explanation by the applicant, the Board shall decide on the matter using the information it has received, vote unanimously to continue the hearing, or decide by unanimous vote that the petition be denied.

### Section 5: Order of Business

- a. Call to order and explanation of procedures by the Chairman
- b. Reading of the legal notice by the Clerk
- c. Applicant's presentation
- d. Questions by the Board members
- e. Comments and/or questions from the public
- f. Applicant's response, if any

#### Section 6: Disposition by the Board

The unanimous vote of all sitting members of the Board is necessary in granting variances, special permit/findings, special permits, appeals, site plan approvals and comprehensive permits. The Board shall set forth its reasons for its decision and any conditions on which the decision may be subject. Once the decision is voted upon and the public hearing adjourned, reconsideration may occur only during a duly-constituted public hearing.

#### Section 7: Filing and Recording of Decisions

Decisions granted by the Board are final only when written, signed by each sitting Board member, and filed with the Town Clerk. The petitioner bears the responsibility for recording of the decision granted by the Board at the Norfolk Registry of Deeds.

#### Section 8: Withdrawal

Any application may be withdrawn by notice in writing to the Executive Secretary at any time prior to publication of the legal notice of the hearing in the newspaper. Requests to withdraw after publication of the legal notice must also be made in writing to the Executive Secretary, but shall require approval by unanimous vote of the Board of Appeals.

#### Section 9: Public Meetings

Public meetings shall be conducted in accordance with Mass General Laws, Chapter 39, Section 23. Notice for each meeting shall be filed with the Town Clerk and a copy of said notice shall be posted publicly on the official bulletin board in the Town Hall at least 48 hours prior to the meeting. Public meetings, while open to the public, are not public hearings in which the public is allowed to participate.

### Article III – Applications to the Board

Note: All reference to “days” shall mean “calendar” days, unless otherwise stated.

#### Section 1: Filing of Applications

Before a petition will be advertised and heard, complete copies of the appropriate official application form, together with a filing fee and such other information and plans as required by the Board, shall be filed in the office of the Board of Appeals. The Executive Secretary shall file all applications, plans and other submission material with the Town Clerk. Before an appeal will be advertised and heard, a complete copy of the appeal, together with such information prescribed by the Board, shall have been filed in the office of the Town Clerk. All applications shall be submitted to the office of the Board of Appeals at least 22 days prior to the date of the Public Hearing. If the application is incomplete, or the agenda has been closed, the application will be heard at the next scheduled public hearing.

#### Section 2: Types of Applications

- a. Variances – The Board shall hold a public hearing for which notice has been given on any application for a variance within 65 days from the date of filing such

application. The decision of the Board shall be made within 100 days from the date of filing the application with the Town Clerk. Failure by the Board to act within the prescribed time shall be deemed a grant of the variance.

If the rights authorized by a variance are not exercised within one year of the date of such grant, the variance shall lapse and may be re-established only after notice and a new hearing, or after any extension permitted by statute.

- b. Special Permit/Findings, Special Permits - The Board shall hold a Public Hearing for which notice has been given on any application for a Special Permit/Finding or a Special Permit within 65 days from the date of filing such application. The decision of the Board shall be made within 90 days from the date of filing the application with the Town Clerk. Failure by the Board to act within the prescribed time shall be deemed a grant of the Special Permit/Finding or Special Permit.

Substantial use or construction authorized by Special Permit/Findings or Special Permits must commence within two years of filing of the decision with the Town Clerk.

- c. Appeals from the decision of any Administrative Officer - Any appeal taken under MGL Section 8 and/or Section XXIV-C of the Zoning Bylaw must be taken within 30 days from the date of the order or decision of the Administrative Officer being appealed. The petitioner shall file the application for appeal with the Town Clerk, specifying the grounds for the appeal. The Town Clerk shall, within 2 business days, transmit copies to the officer or board whose order or decision is being appealed and to the Permit Granting Authority. Said Administrative Officer shall, within 7 days, transmit to the Permit Granting Authority copies of all documents and papers constituting a record of the case in which the appeal is taken.

The Board shall hold a public hearing for which notice has been given within 65 days from the date of filing of the application. The decision of the Board shall be made within 100 days of the date of filing the application with the Town Clerk. The required time limits for a public hearing and said action may be extended by written agreement between the petitioner and the Board. A copy of said agreement shall be filed in the office of the Town Clerk. Failure of the Board to act within the prescribed time limits shall be deemed a grant of the appeal.

- d. Site Plan Approvals for Major Construction Projects – No application for Site Plan Approval shall be submitted to the Special Permit Granting Authority (SPGA) prior to review by the Design Review Board. No application for Site Plan Approval deemed to be a Project of Significant Impact shall be submitted to the SPGA prior to the expiration date of appeal from the Special Permit granted by the Planning Board.

Plans and all other submission materials submitted to the SPGA shall be filed in accordance with the Process Schedule for Site Plan Approval Projects. Within 7 days after the date of filing of the application in the office of the Town Clerk, copies of the complete submitted application shall be sent to the Board of Health, Planning Board, Design Review Board, Town Engineer, Wetlands Protection Committee, Fire Department and any other Town agencies or Boards designated by the SPGA for review and preparation of written recommendations to the SPGA and the applicant prior to the public hearing. Said written recommendations shall be attached to and become part of the application.

The Board shall hold a Public Hearing for which notice has been given on any application for Site Plan Approval within 65 days from the date of filing such application. The decision of the Board shall be made within 90 days from the date of filing the application with the Town Clerk. No building permit or parking plan permit shall be issued by the Inspector of Buildings without the written approval of plans as herein provided. Failure by the Board to act within the prescribed time shall be deemed a grant of the Site Plan Approval.

Substantial use or construction authorized by Site Plan Approvals must commence within two years of filing of the decision with the Town Clerk.

- e. Comprehensive Permits – Any public agency, limited dividend or nonprofit organization proposing to build low- or moderate-income housing may submit a single application to the Board of Appeals in lieu of separate applications to other applicable Boards. The Board of Appeals shall transmit a copy of the application to each of the Boards or Departments noted in Section 3.d. of these Rules and Regulations.

The Board of Appeals shall hold a public hearing within 30 days of receipt of the application, and shall render a decision within 40 days after the termination of the public hearing. If the hearing has not convened or the decision is not rendered within the time allowed, unless extended by mutual agreement between the Board and the applicant, the application shall be deemed to have been allowed and the comprehensive permit shall issue. The time limits for exercising the comprehensive permit shall be determined by law or by condition of the permit.

Section 3 – Application Requirements – All applications must include 1 application form appropriate for the relief sought. All application forms are available in the office of the Board of Appeals.

#### Variances

- a. The Board has the authority to grant variances pursuant to M.G.L. Ch. 40A, Section 10, where owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the bylaw would involve substantial

hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent and purpose of the bylaw.

A written statement including a description of the circumstances especially affecting the property for which a variance is sought which do not generally affect the zoning district in which it is located; and facts which support the conclusion that substantial hardship, financial or otherwise, would result from literal enforcement of the applicable zoning restrictions with respect to the land or building for which the variance is sought must be submitted with the application.

- b. Seven copies of a Certified Plot Plan drawn by a Registered Land Surveyor, of recent date, stamped, signed and dated, on an 8 ½ inch by 11 inch paper on a scale of 1" = 20 feet, indicating the following:
  - Address, square footage of the lot, and area district in which property is located
  - Names of abutting streets
  - All existing structures on the lot with relevant setbacks from the affected lot lines.
  - Dimensions of the proposed addition or structure including bay windows and chimneys and all relevant setbacks.
  - Driveways
  - Side-facing garages, location of garage doors, and relevant setbacks
  - Where, within a distance of 500 feet, three or more dwellings are set back more than 30 feet from the property line, the front setback of all affected dwellings, including the property for which relief is requested.
  - All easements, streams and/or wetland areas
  - Existing and proposed percentage of lot coverage.
  - Existing and proposed maximum building coverage expressed in square feet.
  - Compass rose
- c. Seven copies of all construction plans, which shall be no larger than 11 inches by 17 inches, and which shall include the following:
  - Name of designer
  - Date of plan design
  - Name and address of applicant
  - Existing and proposed floor plans for all floors affected by the proposed structure.
  - Existing and proposed elevation drawings of all sides of the structure affected by the proposed structure
  - Height of proposed ridgeline from average ground level surrounding the structure, if the proposed addition includes a second story.

- d. Photographs including one of the front of the main dwelling, and all sides of the structure affected by the proposed construction.

#### Special Permit/Findings

- a. A written statement providing facts that, should the Board conclude that said alteration/addition shall intensify or add to the existing nonconformance, the addition/alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.
- b., c. and d. - See requirements for variances.

#### Special Permits

- a. All requirements listed on the individual Submission Requirements sheets available in the office of the Board of Appeals.

#### Site Plan Approval

- a. All plans and information as requested on the Site Plan Approval Review/Plans and Submittal Checklist available in the office of the Board of Appeals
- b. Official Development Prospectus available in the office of the Board of Appeals.

#### Comprehensive Permit

- a. All plans and information required pursuant to Chapter 40B, Section 21.

#### Section 4: Filing Fees

The current filing fees, which may be amended by a unanimous vote of the Board of Appeals at any future time, are as follows:

- a. Residential
 

Variances and Special Permit/Findings	- \$200.00
Special Permits	- \$200.00
Special Permit Renewals	- \$150.00
- b. Commercial & Municipal
 

Special Permits	- \$500.00
Signs	- \$300.00
Site Plan Approval without Planning Board Special Permit	- \$2,000.00 & Fire Department Consulting Fee
Site Plan Approval with Planning Board Special Permit	- \$3,500.00
- c. Should the Board elect to have a peer review, the petitioner shall assume all costs of said review.

## Article IV – Decisions by the Board

### Section 1. Deliberation

At the close of the hearing of each petition, the Board shall deliberate. At the conclusion of the deliberation, a motion shall be made and seconded to approve the relief requested. A vote on the motion shall be taken unless the Board, by a unanimous vote, has continued the hearing to a future date, at which time a vote shall be taken.

### Section 2. Voting Requirements

The concurring vote of all three members of the Board shall be necessary to decide in favor of the applicant on any matter legally coming under the jurisdiction of the Board. If one or more members vote not to grant the relief requested, the petition or appeal shall be deemed to be denied.

### Section 2. Reconsideration

Once a petition or appeal has been voted upon and the public hearing adjourned, there shall be no reconsideration without a duly noticed rehearing.

### Section 3. Repetitive Petition

In order to have any petition or application, which has been unfavorably acted upon by the Board, reconsidered by the Board within two years, the petitioner must follow the procedure outlined in Section XXIV-E.5. or Section XXV-C of the Zoning Bylaw.

In all cases in which the Board has allowed the petitioner to withdraw without prejudice, the petitioner has the right to return to the Board with a new petition at any future hearing.

### Section 4. Notices of Decisions

Notices of decisions shall be sent to all parties receiving a Notice of Public Hearing.

Copies of each decision shall be sent to the Planning Board, the Inspector of Buildings and any other Board or Department involved in the original petition.

### Section 5. Recording of Decisions

No decision shall take effect until the Town Clerk has certified that no appeal to the decision has been taken, and, subsequent to this certification, the decision has been filed with the Norfolk Registry of Deeds at the applicant's expense, and copies of the Recording filed with the office of the Town Clerk, the office of the Board of Appeals, and the office of the Inspector of Buildings.



Article V – Miscellaneous Provisions

Section 1. Adoption of Rules - These Rules and Regulations shall become effective upon adoption by the Board of Appeals and upon filing a copy thereof with the Town Clerk.

Section 2. Amendment of Rules – These rules may be amended from time to time, as necessary and proper, by a unanimous vote of the Board of Appeals.

AS APPROVED BY THE ZONING BOARD OF APPEALS ON April 3, 2003

ZONING BOARD OF APPEALS

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Richard L. Seegel, Chairman

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Cynthia S. Hibbard, Vice-Chairman

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David G. Sheffield

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Robert A. Bastille

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J. Randolph Becker

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Robert W. Levy